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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAR - 1 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate Future)	RM-8117, RM-8030
Development of SMR Systems in the)	RM-8029
800 MHz Frequency Band)	
)	
and)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive)	
Bidding)	
800 MHz SMR)	

To: The Commission

REPLY COMMENTS

Fresno Mobile Radio, Inc. (Fresno), hereby replies to the comments made by Nextel Communications, Inc. (Nextel) within this proceeding and respectfully requests that those comments be fully rejected as inconsistent with Nextel's admissions outside this proceeding, as not reflective of Nextel's actions in assisting in the development of a new paradigm of problems visited upon independent operators of SMR systems, and Nextel's questionable standing in this matter.

Wide-Area Licensing

The technique of employing market-based, wide-area licensing was pioneered within the cellular marketplace. The use of these licensing techniques was somewhat successful and has provided for an efficient use of the Commission's resources in

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244

processing applications to provide cellular services to MSAs and RSAs throughout the United States. However, a vital element of that licensing technique was the lack of existing users on the subject spectrum. Employing a clean slate, the Commission was able to base its licensing efforts on arbitrary boundaries, which is impossible in a dynamic environment of existing users providing service to thousands upon thousands of end users. The fact is, the Commission was able to employ market-based licensing to benefit its regulatory efficiencies because the public would not suffer any inconvenience, cost or disadvantage.

The SMR marketplace, in stark contrast, is populated by numerous systems which were not intended nor designed for the purpose of fitting into neat geographic patterns, limited by county boundaries or MSAs or MTAs. These systems provide service to thousands of end users and provide one of the most successful and ubiquitous services throughout the nation. Nextel's comments provide no justification for creating and forwarding a total upheaval of these systems to benefit its lofty, yet unsupported, goals.

To accommodate wide area, MTA-based licensing, Nextel requests 200-channel blocks be auctioned or simply granted to entities which promise to provide ESMR service to the market. Such a promise should not be the basis for acquisition of spectrum warehouses. Not because the forwarding of technology should not be encouraged, but because, first, the public has not demonstrated any overriding desire to obtain ESMR service; second, the public has demonstrated that it requires more dispatch services,

including analog dispatch service; and third, the only ESMR service provider which stands to gain by such a licensing method is Nextel.

Certainly, the Commission cannot find that analog operators will benefit from MTA-based licensing. Most are small operators who have neither the interest nor the resources to build an MTA-wide system. Those same operators recognize that to capitalize such a system, prices to consumers will need to be increased and the price elasticity of the market will not accommodate a radical increase in price for provision of dispatch services. That no market exists for dispatch services which would be sold at higher service rates also demonstrates that the public would not be served by such a licensing plan.

Finally, many of Nextel's comments have been couched in terms which suggest that such a licensing plan would increase competition in the marketplace. These claims are specious at best. The assumption is that increased competition is necessary for digital, interconnected, network services and, therefore, Nextel should be provided exclusive use of 200-channel blocks throughout many of the top 50 urban markets. Perhaps a little logic would assist. How can Nextel provide this competition when it cannot seem to find acceptance for a single ESMR system in any of the markets in which it now operates? How can competition for telecommunications services be increased by an entity which has steadily reduced competition in each market it has entered? How can competition be increased by an entity which seeks to control large blocks of spectrum in

each of the top fifty markets, an advantage that not even cellular operators were provided? And how can such competition be deemed necessary following the advent of PCS, the service which is designed to fill any such perceived void? In sum, how can Nextel's comments be taken seriously when the light of logic is shone upon them? The answer is simply, they can't.

Nextel has now publicly backed away from its earlier claims that it would be "the third cellular provider." Now, it merely states that it intends to provide digital dispatch service and other ancillary services to the public, employing a seamless network. Yet, its belated admission that its technology and systems are not capable of providing a realistic alternative to even analog cellular services runs contrary to its comments within this proposal. It appears, therefore, that Nextel has one answer for this proceeding and another for the financial markets. The Commission deserves more from commenting parties than the output of spin doctors. It requires facts, logic, law, support, and assistance in making a reasoned decision that will not unfairly prejudice its proceedings.

Since, by its own admission, Nextel cannot compete with cellular systems and has no intention to do so, the premise for MTA licensing, that it might provide regulatory parity, has been severely undercut. What point is served by creating parity among providers when the leading advocate has stated that it will not compete? Nextel has thrown in the towel and the Commission should stop the carnage.

Forced Frequency Swapping

Many commenting parties have noted that Nextel's recent request for forced relocation of analog operators is a negation of its earlier claims that, following grant of its waiver, Nextel would be able to provide services in the existing SMR environment. Now, Nextel appears to be claiming that it was wrong. Its system requires contiguous spectrum to operate properly. Or, as a last resort, it requires contiguous spectrum because cellular operators enjoy contiguous spectrum. Sort of the "you gave it to them, so we get it too" theory of regulation.

Nextel's plaintive cries of "not fair! not fair!" ring hollow at best and simply serve to annoy the legitimate analog operators who have not had an opportunity to throw a similar tantrum. Instead, analog operators have had to endure the chaos inflicted on the market by Nextel's entry. They have had to suffer while Nextel gained advantage after advantage, based on nothing more than wealth and the promises which appear permanently unmet for ESMR service. Analog operators have been forced to try to obtain spectrum in an overheated market that is the byproduct of Nextel's hype and hyperbole.

Now, having been given the biggest and the best spectrum toys from the toy box, Nextel covets those few toys which are left. Nextel would also prefer if all of the other operators leave the room so that it may play alone, thank you very much. Perhaps the Commission should accept its parental duties and declare a "time out" for Nextel. This

method of control is widely used to discipline recalcitrant children who have not learned to share with others, whose activity is deemed disruptive to the group, and whose antics are not consistent with good social behavior. At the very least, the Commission should reject Nextel's request that the other members of the industry accommodate Nextel at the cost of their own livelihoods.

Nextel has provided no valid justification for its demand that analog operators provide the spectrum for Nextel's newest foray into the financial markets. It has not shown that spectrum exists to accomplish its proposal. And it has not shown how it might compensate analog operators in a meaningful and complete manner. In sum, forced frequency swapping is the worst of the proposals put forth and it should be the first rejected as the most potentially devastating to the industry.

The Bird In The Hand

Nextel's proposals speak to an illusory, speculative service which is unsupported by present facts. To reach these technological Edens, the Commission merely needs to destroy one of the most vital portions of the telecommunications industry. Analog SMR operators provide a vital, widely accepted, highly demanded, cost effective service to thousands upon thousands of end users. Nextel also provides service to thousands of end users, but the service which they provide is analog dispatch service. Nextel also provides ESMR services, but to a handful of end users which reportedly churn on and off the system with great regularity. High prices and questionable service are the

primary ingredients of churn and Nextel's ESMR services include both.

One portion of the Commission's decision is whether it deems that Nextel's promises and potential are so great as to justify the destruction of the vital analog SMR industry. Adoption of the proposals will, indeed, destroy the analog SMR industry so the question is not lightly taken. Given the choice between Nextel and the remainder of the industry,¹ it appears that the Commission's mandate makes such a choice easy. Nothing within the Communications Act requires or suggests that the Commission should regulate in a manner which benefits the few over the interest of the many. Case precedents clearly show that the Commission's regulatory efforts should not involve technology forcing. And the Commission's responsibility should always favor the increase of competition, the provision of services to a demanding public, and the promotion of fundamental fairness in its regulation. If these factors are employed to decide this matter, the outcome is clear. The Commission will summarily reject the proposals as inappropriate and biased toward a single operator.

The adverse impact of adoption might be more acceptable, although still devastating, if there were even a scintilla of evidence that Nextel's ESMR system was able to serve an existing or potential demand within the marketplace with such efficiency

¹ Fresno recognizes that there are other parties who have supported some or all of Nextel's proposals. However, it takes no quantum leap of imagination to determine the motivations of those commenting parties, whose business plans depend, to some or a large extent, on Nextel's energies. Accordingly, the focus of the Commission's analysis should be on the central figure, Nextel.

that alternative, less harmful avenues, paled. Such is not the case. Nextel's system is not demanded by the public. Its offerings are not equal to PCS or even cellular service. And its demands require that the Commission harm innocent operators and end users.

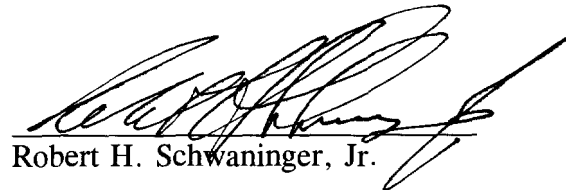
There can be no other logical course for the Commission than to save the analog SMR industry which possesses a long and glorious history of service to the public, and to reject the proposals of the upstart Nextel which knew the environment before entering and has provided no logical or legal basis for redefining that environment to the detriment of legitimate carriers and their many, many end users.

Conclusion

For the above stated reasons, Fresno, respectfully requests that the Commission reject all of its proposals within the Further Notice of Proposed Rule Making as wholly detrimental to legitimate operators, the public, and to persons who have reasonably relied on the Commission's action in accord with its Congressional mandate.

Respectfully submitted,
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By


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Dated: March 1, 1995

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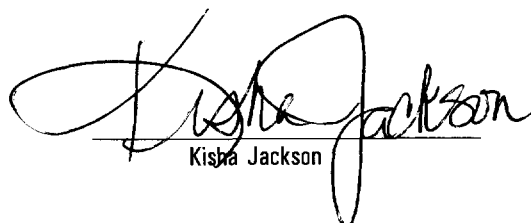
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